

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HANNA HARP,

Plaintiff,

v.

Case No.

Honorable _____

NORDSTROM FSB, d/b/a
NORDSTROM BANK; NORDSTROM, INC.

Defendant.

_____/

Nemer N. Hadous (CA #264431)
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COMPLAINT

NOW COMES Plaintiff Hanna Harp, ("Plaintiff"), by counsel, for her
Complaint against Defendant Nordstrom FSB d/b/a/ Nordstrom Bank, and
Nordstrom, Inc. (collectively, "Defendant") alleging violations of the Telephone
Consumer Protection Act ("TCPA"), 47 U.S.C. §227.

JURISDICTION AND VENUE

1. This Court has federal question jurisdiction because this action arises
out of violations of federal law. 28 U.S.C. §§ 1331. Jurisdiction is also proper

1 7. Defendant Nordstrom, Inc. is a Washington corporation. This
2 Defendant may be served with process through its resident agent Corporate
3 Creations Network, Inc., 28175 Haggerty Road, Novi, Michigan 48377.
4

5 8. During all time pertinent to this Complaint, Defendant acted through
6 authorized agents, employees, officers, members, directors, heirs, successors,
7 assigns, principals, trustees, sureties, subrogees, representatives, and/or insurers.
8

9 9. Any violations by Defendant as set forth in this Complaint were
10 knowing, willful, and intentional, and Defendant did not maintain procedures
11 reasonably adapted to avoid any such violation.
12

13 **TELEPHONE CONSUMER PROTECTION ACT (47 U.S.C. § 227)**
14

15 10. Plaintiff incorporates herein by reference all of the above paragraphs
16 of this Complaint as though fully set forth at length herein.
17

18 11. Congress enacted the TCPA in response to a growing number of
19 consumer complaints regarding certain telemarketing practices.
20

21 12. The TCPA regulates, *inter alia*, use of automated telephone
22 equipment, or "autodialers." Specifically, the plain language of § 227(b)(1)(A)(iii)
23 prohibits use of autodialers to make any call to a wireless number in the absence
24 of an emergency or prior express consent of the called party.
25

26 13. According to findings by the Federal Communication Commission
27 ("FCC"), the agency Congress vested with authority to issue regulations
28

1 implementing the TCPA, such calls are prohibited because, as Congress found,
2 automated or pre-recorded telephone calls are a greater nuisance and invasion of
3 privacy than live solicitation calls, and such calls can be inconvenient.
4

5 14. On January 4, 2008, the FCC released a Declaratory Ruling wherein
6 it confirmed that autodialed and prerecorded message calls to a wireless number
7 by a creditor (or on behalf of a creditor) are permitted only if the calls are made
8 with the "prior express consent" of the called party. The FCC "emphasize[d] that
9 prior express consent is deemed to be granted only if the wireless number was
10 provided by the consumer to the creditor, and that such number was provided
11 during the transaction that resulted in the debt owed."
12
13

14 15. The TCPA prohibits the use of any "automatic telephone dialing
15 systems" to call cellular telephones. It also prohibits the use of artificial or
16 prerecorded messages.
17
18

19 16. An "automatic telephone dialing system" means any equipment that
20 has the "capacity to dial numbers without human intervention." *Griffith v.*
21 *Consumer Portfolio Serv., Inc.*, 2011 WL 3609012 (N.D. Ill. Aug. 16, 2011).
22
23

24 **FACTUAL ALLEGATIONS**

25 17. In June 2017, Defendant began flooding Plaintiff's mobile telephone
26 ending in 3747 with daily collection calls.
27
28

1 18. Defendant calls Plaintiff's cellular telephone at an annoying and
2 harassing rate on a near daily basis.

3 19. Defendant telephones Plaintiff multiple times per day, at nearly
4 identical intervals signaling use of an automatic telephone dialing system.

5 20. Defendant calls Plaintiff from the telephone number (866) 491-7864
6 and (888) 843-9802. These numbers are affiliated with, owned and operated by
7 Defendant.
8

9 21. On June 20, 2017, Defendant telephoned Plaintiff's mobile phone
10 with its automatic telephone dialing system. When Plaintiff answered this phone
11 call, there was a momentary pause and clicking as the call was transferred to a
12 live person to handle the answered call.
13

14 22. Plaintiff advised Defendant she did not wish to be contacted any
15 more, and asked Defendant to stop calling—thereby revoking consent to be
16 contacted. Rather than cease these calls, Defendant **increased** their frequency.
17

18 23. Over the next few months, Defendant called Plaintiff approximately
19 130 additional times since Plaintiff revoked consent to be called by Defendant.
20
21 **Defendant placed up to 4 calls per day to Plaintiff.**

22 24. Despite Plaintiff's revocation, Defendant continues to harass
23 Plaintiff on a near daily basis by repeatedly calling her mobile phone.
24
25
26
27
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1 25. The telephone number Defendant contacts Plaintiffs at with its
2 "automatic telephone dialing system," is assigned to cellular telephone services as
3 specified in 47 U.S.C. § 227(b)(1)(A)(iii).
4

5 26. Defendant uses an "automatic telephone dialing system," as defined
6 by 47 U.S.C. § 227(a)(1), to place these repeated calls to Plaintiff. Defendant's
7 automatic telephone dialing system places multiple daily calls to Plaintiff's
8 cellular telephone at similar intervals.
9

10 27. Defendant's calls constitute calls that are not for emergency
11 purposes as defined by 47 U.S.C. § 227(b)(1)(A).
12

13 28. Defendant's calls are placed to a telephone number assigned to a
14 cellular telephone service pursuant to 47 U.S.C. § 227(b)(1)(A)(iii).
15

16 29. Under the TCPA and pursuant to the FCC's January 2008
17 Declaratory Ruling, the burden is on the Defendant to demonstrate that the
18 Plaintiff provided express consent within the meaning of the statute because it is
19 the best entity to determine how numbers were attained.
20
21

22 30. Even if Defendant received Plaintiff's "prior express consent" to
23 receive calls using an automatic telephone dialing system, "prior express consent"
24 was revoked, when Plaintiff told Defendant to stop calling her.
25

26 31. The natural consequence of Defendant's statements and actions is to
27 produce an unpleasant and hostile situation between Defendant and Plaintiff.
28

COUNT ONE

VIOLATION OF TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227

Defendant Nordstrom

32. Plaintiff incorporates herein by reference all of the above paragraphs of this Complaint as though fully set forth at length herein.

33. The TCPA is intended to prevent calls and text messages like the ones described herein, and to protect the privacy of citizens like Plaintiffs. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

34. In enacting the TCPA, Congress found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....” *Mims* 132 S. Ct. at 744.

35. Section 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party. The TCPA prohibits the use of any "automatic telephone dialing systems" to call cellular telephones. It also prohibits the use of artificial or prerecorded messages. An "automatic telephone dialing system" means any equipment that has the "capacity to dial numbers without human

1 intervention." *Griffith v. Consumer Portfolio Serv., Inc.*, 2011 WL 3609012 (N.D.
2 Ill. Aug. 16, 2011).

3 36. Defendant made unsolicited commercial phone calls to the wireless
4 telephone number of Plaintiff, using equipment that had the capacity to store or
5 produce telephone numbers to be called, using a random or sequential number
6 generator.
7

8
9 37. On June 20, 2017, Plaintiff instructed Defendant not to call him
10 anymore, thereby revoking consent to be contacted by Defendant.
11

12 38. Rather than cease its collection calls, Defendant telephoned Plaintiff
13 over 130 times over a roughly 3-month period.
14

15 39. Defendant's collection telephone calls to Plaintiff are without
16 Plaintiff's prior express consent.
17

18 40. Defendant's conduct therefore violates the TCPA by Placing non-
19 emergency telephone calls to Plaintiff's cellular telephone using an automatic
20 telephone dialing system in violation of 47 U.S.C. § 227 (b)(1)(A)(iii).
21

22 **PRAYER FOR RELIEF**

23 41. **WHEREFORE**, Plaintiff, respectfully requests judgment against
24 Defendant, for the following:
25
26
27
28

- 1 (a) For Defendant's negligent violations of 47 U.S.C. 227(b)(1),
2 Plaintiff is entitled to and requests \$500.00 in statutory damages, for
3 each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
4
- 5 (b) For Defendant's willful and/or knowing violations of 47 U.S.C.
6 227(b)(1), Plaintiff is entitled to and requests treble damages, as
7 provided by statute, up to \$1,500.00, for each and every violation,
8 pursuant to 47 U.S.C. 227(b)(3)(B) and 47 U.S.C. 227(b)(3)(C).
9
- 10 (c) Such other relief this Honorable Court deem just and proper,
11 including post-judgment interest.
12

13 **JURY DEMAND**
14

15 Plaintiff hereby demands jury trial on all issues so triable.

16 **RESPECTFULLY SUBMITTED** this 4th day of October 2017,
17

18 **HADOUS|CO. PLLC**

19 /s/Nemer N. Hadous

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